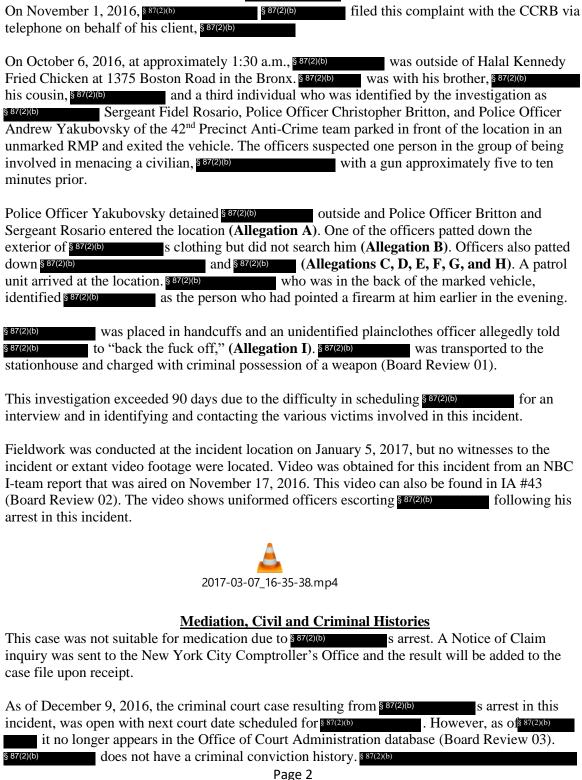
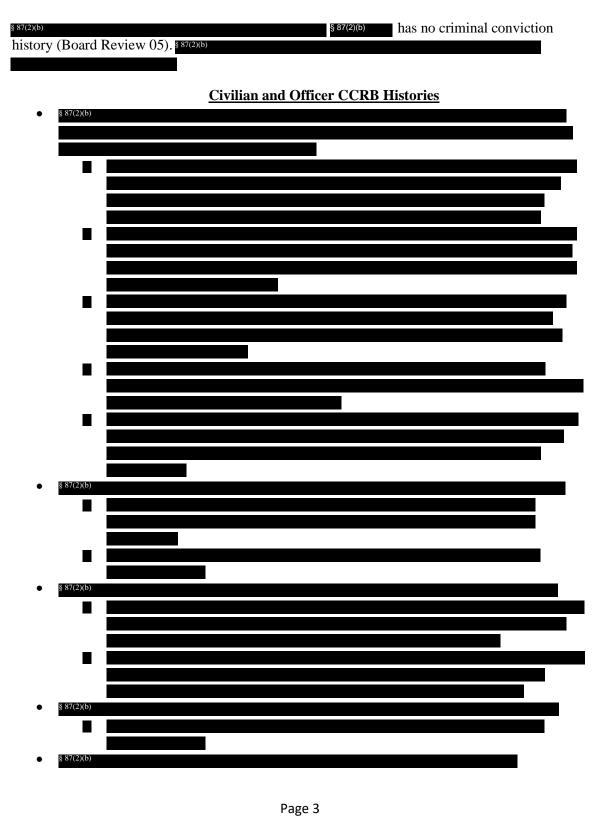
CCRB INVESTIGATIVE RECOMMENDATION

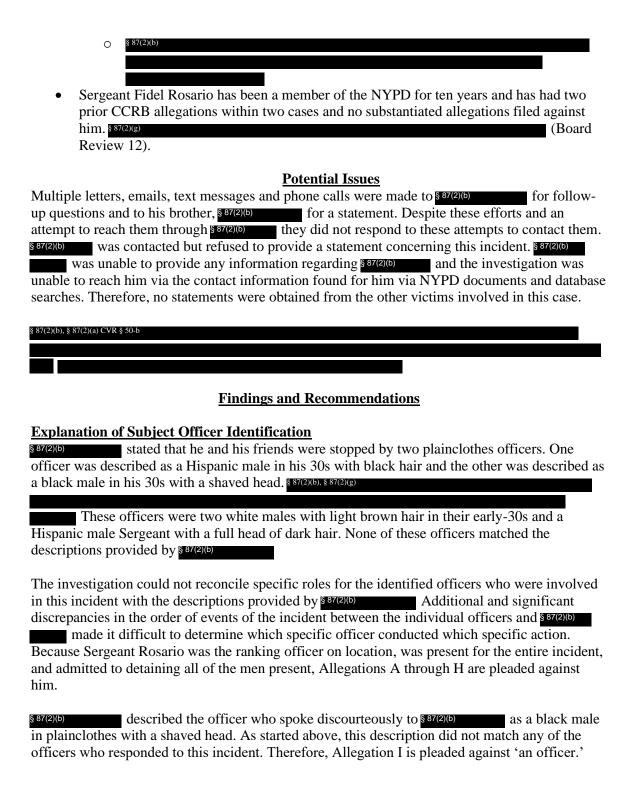
Investigator:		Team:	CCRB Case #:		Force	$\overline{\mathbf{V}}$	Discourt.	☐ U.S.
Benjamin Wurtzel		Squad #2	201609147	V	Abuse		O.L.	☐ Injury
Incident Date(s)		Location of Incident:			Precinct:	10	Mo. SOL	EO SOL
				ľ				
Thursday, 10/06/2016 1:30 AM		1375 Boston Road			42		1/6/2018	4/6/2018
Date/Time CV Reported		CV Reported At:	How CV Reported:	:	Date/Time	Rece	eived at CCl	RB
Tue, 11/01/2016 3:42 PM		CCRB	Phone		Tue, 11/01	/201	6 3:42 PM	
Complainant/Victim	Type	Home Addre	ess					
Witness(es)		Home Addre	ess					
Subject Officer(s)	Shield	TaxID	Command					
1. SGT Fidel Rosario	02850	943759	042 PCT					
2. An officer			042 PCT					
Witness Officer(s)	Shield No	Tax No	Cmd Name					
1. POM Christophe Britton	00229	952496	042 PCT					
2. POM Andrew Yakubovsky	17793	949813	042 PCT					
3. POM Edgar Duncan	20691	946961	042 PCT					
Officer(s)	Allegatio	n			Inve	estiga	ator Recon	nmendation
A.SGT Fidel Rosario	Abuse: Se	ergeant Fidel Rosario st	topped § 87(2)(b)					
B.SGT Fidel Rosario		ergeant Fidel Rosario fr						
C.SGT Fidel Rosario		ergeant Fidel Rosario st						
D.SGT Fidel Rosario		ergeant Fidel Rosario st						
E.SGT Fidel Rosario		ergeant Fidel Rosario st						
F.SGT Fidel Rosario	Abuse: Se	ergeant Fidel Rosario fr	risked § 87(2)(b)					
G.SGT Fidel Rosario	Abuse: Se	ergeant Fidel Rosario fr	risked § 87(2)(b)					
H.SGT Fidel Rosario	Abuse: Se	ergeant Fidel Rosario fr	risked § 87(2)(b)					
I. An officer	Discourte	sy: An officer spoke di	scourteously to \$87(2)	(b)				

Case Summary





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Allegations not pleaded

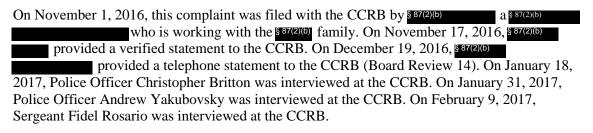
- alleged that he experienced stomach pains while in the cell area and that he mentioned these concerns to unidentified officers. \$87(2)(5) did not request medical treatment and did not independently seek medical treatment upon his release. The officers investigated in relation to this case did not hear \$87(2)(5) ever complain of stomach pain. Therefore an allegation of refusal to provide medical treatment is not pleaded.
- alleged that Detective David Terrell of the 42nd Precinct pushed into a cell at the 42nd Precinct stationhouse and struck him with an open palm.

 struck him with an open palm.

 did not allege that this occurred and an interview with struck him with an open palm.

 regards to CCRB case number 201609146, determined that this alleged action occurred during that incident. Therefore, an allegation of force is not pleaded in regards to this incident.

Allegation A – Abuse of Authority: Sergeant Fidel Rosario stopped 887(2)(b) Allegation B – Abuse of Authority: Sergeant Fidel Rosario frisked 887(2)(b)



It is undisputed that \$87(2)(b) called 911 and reported that an approximately \$87(2)(b) cold Hispanic male wearing an orange sweatshirt and gray pants, who was part of a group, pointed a gun at him. It is also undisputed that \$87(2)(b) cold Hispanic male, was stopped by officers less than 10 minutes after the incident was reported and approximately four blocks away, wearing an orange hooded sweatshirt and gray pants. \$87(2)(b) arrived at the location of \$87(2)(b) cold Hispanic male, was stopped by officers less than 10 minutes after the incident was reported and approximately four blocks away, wearing an orange hooded sweatshirt and gray pants. \$87(2)(b) cold Hispanic male, was stopped by officers less than 10 minutes after the incident was reported and approximately four blocks away, wearing an orange hooded sweatshirt and gray pants.

stated that he had been at home when he decided to join his brother, \$87(2)(b) and his cousin, \$87(2)(b) and his brother's friend, \$87(2)(b) on a walk to the Halal Kennedy Fried Chicken. While entering the store, two police officers detained \$87(2)(b) outside and permitted the rest of the men to enter. One of these officers immediately placed against the wall \$87(2)(b) \$87(2)(b) \$87(2)(b) \$87(2)(c) \$87(

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§ 87(2)(b)	stated that he was wall	king home and was	at the intersection of Frank	lin
Avenue and East	170 th Street when he wa	as approached by a	group of approximately 12	men,
including one app	roximately 17 or 18-yes	ar-old Hispanic mal	le dressed in an orange hoo	ded
sweatshirt. The m	ale in the orange hoode	d sweatshirt to poin	ited a firearm at § 87(2)(b)	
and spoke to him	in a menacing manner.	§ 87(2)(b)	fled from the location to his	home
where he called 9	11. § 87(2)(b)	vas picked up by un	firmed officers and brough	t to the
Halal Kennedy Fr	ied Chicken shortly afte	er. § 87(2)(b)	observed his assailant ins	side of the
store with six other	er men speaking with tw	vo uniformed office	rs. After § 87(2)(b)	identified
his assailant, § 87(2)(was placed	in handcuffs, friske	ed, and placed under arrest.	

Sergeant Rosario stated that he received a radio run concerning a group of males with a firearm at the corner of Fulton Avenue and East 170th Street. Sergeant Rosario could neither recall the size of the group nor the details of the provided clothing description. The officers immediately proceeded to the area and conducted a canvass. Sergeant Rosario observed a group of five men at the intersection of Boston Road and Crotona Avenue, a one minute drive from the incident location. All five men entered the Halal Kennedy Fried Chicken at the corner and the officers parked outside and followed them in. Sergeant Rosario recalled that the clothing the men were wearing matched the description in the radio run but could not recall this description specifically at the time of his CCRB interview. Sergeant Rosario further stated that the proximity of the men to the incident location and the fact that they were the only group of people observed walking, led him to suspect them of being involved with the reported crime. Sergeant Rosario did not believe that the radio run specified which group member was in possession of the firearm.

Sergeant Rosario did not suspect any particular member of the group of possessing a firearm and did not observe any bulges on the men in the group. Sergeant Rosario stated that some of the men in the group were frisked but could not say who. Sergeant Rosario did not know if was one of the men frisked at this time. A sector unit with the victim arrived at the location and one of the men in the group was identified as the assailant and placed sergeant Rosario or whether he was one of the men who were frisked prior to the arrival of the sector unit. Officers from the command returned to the Halal Kennedy Fried Chicken later that day and were told by an employee that some members of the detained group returned after the police had been there and removed a firearm from behind a toy vending machine.

Police Officer Yakubovsky stated that the officers received a radio run concerning a group with a firearm menacing an individual at the intersection of East 167th Street and Franklin Avenue in the Bronx. Police Officer Yakubovsky further stated that the assailant who was identified as possessing the firearm was dressed in an orange hooded sweatshirt. The officers immediately canvassed the area and identified a group of four to five males approximately one block away after five minutes. **87(2)(6)** was with the group and was wearing an orange hooded sweatshirt. The men entered the Halal Kennedy Fried Chicken at the intersection and the officers parked outside the location. **87(2)(6)** immediately returned outside and Sergeant Rosario and Police Officer Britton passed him as they entered. Police Officer Yakubovsky remained outside with **87(2)(6)**

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As per Police Officer Yakubovsky, \$87(2)(b) was considered detained until arrived to determine whether or not he was his assailant. \$87(2)(b) was being detained because he matched the perpetrator's description, was near the incident location, and was travelling in a group, as described by the radio run. The unit had requested that a uniformed unit bring \$87(2)(b) to the location at this point. The unit arrived approximately five minutes later and \$87(2)(b) was identified as the assailant and placed under arrest. Police Officer Yakubovsky could not recall whether he frisked \$87(2)(b) prior to the arrival of the marked unit carrying \$87(2)(b) Police Officer Yakubovsky could not recall whether he had any physical contact with \$87(2)(b) prior to the arrival of \$87(2)(b)
Police Officer Britton stated that the officers received a radio run regarding a male with a gun who was traveling with a large group at the corner of Fulton Avenue and East 169 th Street in the Bronx. The radio run further stated that the male in question, described as Hispanic male with an orange hooded sweatshirt and gray sweatpants, pointed a firearm at an individual at that location. Approximately five minutes after receiving the radio run, the officers identified a group of five men walking at the intersection of Crotona Avenue and Boston Road, three blocks away from the incident location. Was west with the group and was dressed in an orange hooded sweatshirt and gray sweatpants. The five men walked into a Halal Kennedy Fried Chicken at the corner and all three officers followed them in.
As per Police Officer Britton, the officers spoke to all three men and did not address any of them individually. The officers were intent on keeping the men at the location until a marked unit arrived with \$57(2)(b) to identify his assailant. \$57(2)(b) was frisked and placed under arrest after \$57(2)(b) to identified him as his assailant and not before. Police Officer Britton was shown a copy of the Stop, Question, and Frisk Report that he filled out for \$57(2)(b) (Board Review 25). Police Officer Britton could not confirm whether he or another officer conducted the frisk for which the report was filled out. Officers later recovered a video from the original incident location that showed \$57(2)(b) pointing a firearm at \$57(2)(b)
The Stop, Question, and Frisk Report for this incident, filled out by Police Officer Britton, indicated that the stop of \$37(2)(b) was based on a radio run. \$37(2)(b) was suspected of criminal possession of a firearm and menacing. \$37(2)(b) was dressed in an orange sweatshirt and gray pants and was in the approximate location that the victim stated he would be in which was near the incident location. \$37(2)(b) was positively identified by the victim and was frisked and searched incident to his arrest. The Stop, Question, and Frisk Report notes that one other individual was stopped at this time.
A transcription of the 911 call for this incident indicated that \$87(2)(b) described his assailant as an 18-year-old Hispanic male wearing an orange hooded sweatshirt and gray sweatpants and travelling with a group of seven men. The male pointed a firearm at before walking away on East 170 th Street towards Boston Road (Board Review 18). The radio communications indicated that the 42 nd Precinct Anti-Crime team had a group of men detained at Crotona Avenue and Boston Road eight minutes after the 911 call was made (Board Review 19).

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An officer has reasonable suspicion to stop and detain a person based upon the general description of a perpetrator, the person's close proximity to the site of the crime, and the short passage of time between the crime and the observation of the defendant. People v. Bennett, 27 N.Y. 3d 483 (2007) (Board Review 20). A frisk is justified if the officer reasonably suspects that he is in danger of physical injury by virtue of the detainee being armed. People v. De Bour, 49 A.D. 2d 1038 (1976) (Board Review 21). The officer need not have an independent and particularized belief that the suspect is armed if that suspect was reported to be in possession of a weapon. People v. Torres, 1997, 39 A.D. 2d 154 (Board Review 22).

was wearing a specific and identifiable orange hooded sweatshirt and was travelling with a group of males when he was detained by the police. In addition to matching the
clothing description and traveling with a group of companions, \$87(2)(6) was identified within
minutes of the incident occurring and was located at a business approximately two blocks away in
the direction \$87(2)(b) last saw the men walking in. All information concerning \$87(2)(b) s dress, company, and direction of movement were relayed to the responding officers.
s dress, company, and direction of movement were relayed to the responding officers.
§ 87(2)(b), § 87(2)(g)
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§ 87(2)(b), § 87(2)(g)
·
§ 87(2)(b), § 87(2)(g)
Allegation C – Abuse of Authority: Sergeant Fidel Rosario stopped [587(2)(6)
Allegation D – Abuse of Authority: Sergeant Fidel Rosario stopped [587(2)(b)
Allegation E – Abuse of Authority: Sergeant Fidel Rosario stopped 887(2)(b)
Allegation F – Abuse of Authority: Sergeant Fidel Rosario frisked 887(2)(6)
Allegation G – Abuse of Authority: Sergeant Fidel Rosario frisked \$87(2)(b)
Allegation H – Abuse of Authority: Sergeant Fidel Rosario frisked 837(2)(b)
alleged that he observed Sergeant Rosario and either Police Officer Yakubovsky
or Police Officer Britton detain and pat down the exterior clothing of \$87(2)(b)
and \$87(2)(b) did not see the officers put their hands inside the pockets of any

CCRB Case # 201609147

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of the detained men. The three men were then led outside where they were told to stand against the exterior wall of the Halal Kennedy Fried Chicken where they were detained until \$87(2)(b) was identified by \$87(2)(b) and placed under arrest.

Sergeant Rosario stated that he counted five men in the group including [387(2)]. The men observed the police vehicle as it approached without lights or sirens and made frequent furtive glances at it as they walked inside of the Halal Kennedy Fried Chicken. The men matched the clothing description provided in the radio run, though Sergeant Rosario did not associate any one man in particular with the firearm reported in the radio run and did not see any bulges on their clothing. Sergeant Rosario immediately conducted frisks of the men at the location but did not recall exactly how many of the men were frisked. Sergeant Rosario stated that the men were being frisked to ensure that they did not have firearms and to ensure officer safety.

Police Officer Yakubovsky stated that Police Officer Britton and Sergeant Rosario entered the Halal Kennedy Fried Chicken while he waited outside with Police Officer Yakubovsky did not personally see the other men get frisked and did not know if they were considered free to go during this time. Police Officer Yakubovsky could not see into the interior of the Halal Kennedy Fried Chicken from where he was standing outside with

Police Officer Britton stated that the radio run for the incident included the description of a male in a brown shirt. This was the only clothing description provided in addition to \$87(2)(b)

Police Officer Britton stated that all three officers followed the group into the Halal Kennedy Fried Chicken. The men were considered detained at this time and until a marked unit arrived with the victim to identify his assailant. Police Officer Britton initially stated that the officers did not frisk the civilians during this time and \$87(2)(b) was only frisked incident to his arrest. After he was shown a Stop, Question, and Frisk Report filled out by himself for \$87(2)(b)

Police Officer Britton acknowledged that \$87(2)(b) was frisked and searched and stated that it was because he was wearing a brown shirt and because Police Officer Britton had arrested him in the past for firearm possession. This information was reflected in the Stop, Question, and Frisk Report (Board Review 25). Police Officer Britton could not recall which officer searched \$87(2)(b) or at what point during the incident this occurred.

An officer is allowed to conduct a forcible stop of a person if the officer has reasonable suspicion of criminality. A frisk is justified if the officer reasonably suspects that the detainee is armed. People v. De Bour, 49 A.D. 2d 1038 (1976) (Board Review 21). A frisk is permissible only if an officer possesses a particularized, reasonable suspicion that a suspect is armed. People v. Gonzalez, 295 A.D. 2d 183 (2002) (Board Review 23). An individual's mere presence in the company of another person whom the police have probable cause to arrest does not create reasonable suspicion to justify a stop or frisk of the individual. People v. McLoyd, 35 Misc. 3d 822 (2012) (Board Review 26). Knowledge of a person's past record can be considered a relevant factor in determining whether a police officer's conduct during an encounter in reasonable, provided there is also some present indication of criminality based upon observable conduct or reliable hearsay information. People v. Boulware, 130 A.D.2d 370 (1987) (Board Review 24).

§ 87(2)(g)

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Allegation I – Discourtesy: An officer spoke discourteously to alleged that a plainclothes officer said, "Get the fuck back," to his brother, as stated above, and plainclothes officer said, "Get the fuck back," to his brother, as descriptions of the officers involved in this incident vary widely from the profiles of the Anti-Crime officers who responded. Sergeant Rosario and Police Officers Britton and Yakubovsky denied using any profanity during this encounter, though all three noted that the men in the group became disorderly while are not as being placed into custody and placed in a police vehicle. Squad: 2 Investigator: Signature Print Date Reviewer: Title/Signature Print Date	§ 87(2)(b), § 87(2)(g)			
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Rosario and Police Officers Britton and Yakubovsky denied using any profanity during this encounter, though all three noted that the men in the group became disorderly while \$\frac{897(2)(6)}{857(2)(6)}\$ was being placed into custody and placed in a police vehicle. Squad: 2 Investigator: Signature Print Date Squad Leader: Title/Signature Print Date Reviewer: Title/Signature Print Date				
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	keviewer:	Title/Signature	Print	 Date
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